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In the Supreme Court of the United States

OCTOBER TERM, 1954

SAMUEL BERMAN AND SOLOMON H. FELDMAN, EXECUTORS OF THE ESTATE OF MAX R. MORRIS, DECEASED, APPELLANTS

v.

ANDREW PARKER, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY AND NATIONAL CAPITAL PLANNING COMMISSION

SIMON E. SOBELOFF,
Solicitor General,
PERRY W. MORTON,
Assistant Attorney General,
OSCAR H. DAVIS,
Special Assistant to the Attorney General,
ROGER P. MARQUIS,
Attorneys,
Department of Justice, Washington 25, D. C.

GEORGE F. ROBERTSON,
General Counsel,
District of Columbia Redevelopment Land Agency,
WILLIAM S. CHEATHAM,
General Counsel,
National Capital Planning Commission,
Washington 25, D. C.
Of Counsel.

In the Supreme Court of the United States

OCTOBER TERM, 1953

No. — 550

MAX R. MORRIS, APPELLANT

v.

ANDREW PARKER, ET AL., APPELLEES

MEMORANDUM STATING POSITION OF APPELLEES

The judgment in this case is favorable to appellees in that the three-judge district court has held that the District of Columbia Redevelopment Act of August 2, 1946, 60 Stat. 790, is constitutional and has dismissed appellant's complaint seeking to enjoin further action pursuant to the Act. However for reasons to be stated herein, it is believed that probable jurisdiction should be noted and the case heard upon the merits.

A. *Summary of the facts and the proceedings below:*

The purposes of the Redevelopment Act are briefly summarized in its title as follows: "To provide for the replanning and rebuilding of slum,

blighted, and other areas of the District of Columbia and the assembly, by purchase or condemnation, of real property in such areas and the sale or lease thereof for the redevelopment of such area in accordance with said plans; and to provide for the organization of, procedure for, and financing of such planning, acquisition, and sale or lease, and for other purposes." In section 2, Congress stated at length the reasons requiring the legislation and the purposes sought to be accomplished thereby.

Project Area B here involved is the first project undertaken under the Act. It encompasses an area of some 76 acres bounded by South Capitol Street, Eye Street, Fourth Street and E Street in the southwest section in which 57% of the dwellings depended on outside toilets, 60% had no baths, 82% no wash basins or laundry tubs, 29% no electricity and 83% no central heating. A survey showed 64% of the dwellings were beyond repair and 18% needed major repairs. Statistics showed a much higher death rate for the area than the District of Columbia generally.

The plan for redevelopment of the project area which was approved by the National Capital Planning Commission,[1] and, after public hearing, by the Board of Commissioners of the District of Columbia, was certified to the District of Columbia Redevelopment Land Agency for execution as provided in the Act. Preliminary steps for this purpose have been taken by the Land Agency.

[1] Formerly the National Capital Park and Planning Commission

The redevelopment plan allocates use of the land for various purposes such as residential, first commercial, second commercial, public uses, expressway and streets, with detailed provisions as to types of dwelling units, etc., at least one-third being low-rent housing with a maximum rental of $17.00 per room per month. Negotiations are being had for the lease or purchase of parts of the area by private firms as provided in the Act (section 7) which requires *inter alia*, that any sale or lease shall provide that the lessee or purchaser shall carry out, or cause to be carried out, the approved redevelopment plan.

Section 5(a) of the Act grants to the Land Agency "the power to further the redevelopment of blighted territory in the District of Columbia and the prevention, reduction, or elimination of blighting factors or causes of blight and for that purpose to acquire and assemble real property by purchase, exchange, gift, dedication or *eminent domain* * * * ," (Emphasis added).

Appellant, the owner of a department store located within Project Area B, instituted this suit for a temporary and permanent injunction against a taking of his property on the ground that the Redevelopment Act is unconstitutional in itself and as implemented by the plan for Project Area B, and that as applied to appellant's property the plan is void. A motion to dissolve the three-judge court having been denied, it considered the issues upon motion to dismiss or for summary judgment and entered judgment dismissing the complaint.

After summarizing the provisions of the statute, the actions taken thereunder and the facts in relation to Project Area B, the opinion of the court held that the power to acquire by eminent domain property to be used for streets, recreation centers, parks and other public uses was clear; as was the power to acquire real estate for the construction of low-cost housing. It then stated that the "problem concerns the remainder of the property in the area, which is acquired by eminent domain and sold or leased to private persons for private uses, with the provision that not less than one-third of the housing accommodations to be built on the property are to be for low-rent housing". The court then determined that the instant plan is not "a low-rent housing project" and overruled appellant's objection that the Act did not apply to commercial properties.

The opinion then discusses at length several decisions of this Court relating to the scope of the power of eminent domain including *United States ex rel T.V.A. v. Welch*, 327 U.S. 546, and concludes that the problem lies in three parts, which are then separately considered. Under the heading "I" it sustains the authority to condemn buildings which constitute a slum. In "II" it separately considers the title to land upon which such buildings are situated, states that title to real estate cannot be taken merely because a slum now exists on the land and holds that such title may be taken only if clearance of the slum is impracticable without taking title to the land or if proposed restrictions which

can be imposed only through the medium of resale "are fairly calculated to prevent recurrence of slum conditions". Under the heading "III" it discusses the problem of an area which is not a slum but is "blighted" and out of date. This discussion is again subdivided into two parts: first, where the plan is to develop an area in which no slums exist and, second, an area upon part of which slums exist. The first of these categories is discussed on the hypothesis that the area is backward, stagnant, anything except detrimental to health, safety or morals, and concludes that Congress has no power to authorize the seizure by eminent domain for the sole purpose of redeveloping the area according to its, or its agent's, judgment of what a well-developed, well-balanced neighborhood would be. In connection with the second category recent federal and state court decisions relating to redevelopment programs are discussed, as well as the plan for Project Area B, and the court concludes that its purposes, in addition to the elimination of slum conditions, is to create a pleasant neighborhood. The opinion concludes—

> We hold that Congress did not in the Redevelopment Act confer power to seize property beyond the reasonable necessities of slum clearance and prevention, the word "slum" meaning conditions injurious to the public health, safety, morals and welfare.
>
> If property is seized for the purpose of eliminating or preventing slums within the

limitations and in accordance with the rules we have described, the fact that it may be sold subsequently to private persons does not vitiate the validity of the seizure.

B. *Even though the judgment of dismissal is correct the basis upon which the conclusion is reached is partially erroneous and imposes unwarranted limitations upon the exercise of the power of eminent domain:* In *United States ex rel T.V.A.* v. *Welch*, 327 U.S. 546, this Court, speaking of the Circuit Court of Appeals, said (p. 551): "It first analyzed the facts by segregating the total problem into distinct parts and, thus, came to the conclusion that T.V.A.'s purpose in condemning the land in question was only one to reduce its liability arising from the destruction of the highway". Here, as the summary, *supra*, makes clear, the district court has gone much further in attempting to treat separately various aspects of the total problem, even to the extent of holding that the authority to condemn land upon which a building rests is more limited than the power to condemn the building. In the *Welch* case this Court said (pp. 552-553): "In passing upon the authority of the T.V.A. we would do violence to fact were we to break one inseparable transaction into separate units. We view the entire transaction as a single integrated effort on the part of T.V.A. to carry on its congressionally authorized functions." Similarly, the Redevelopment Act clearly contemplated execution of its purposes in terms of a project area rather than in terms of particular lots or particular

buildings or in terms of the various uses to which parts of the area will be put under the plan.[2]

A piecemeal approach to this problem which leaves isolated structures in the hands of recalcitrant owners and thus prevents the assembly of all the land in the area would seriously impair, if not frustrate, the purposes of the program. This is so because many factors—such as haphazard and mixed land uses, overcrowding of the land, outmoded street patterns, lack of light, air and living space, inadequate room for necessary community facilities, deterioration of neighborhoods and growing dilapidation of all structures—combine to produce a slum or blighted area. A complete reorganization of the area is necessary in order to eradicate these various causes of the evil. Compare *New York City Housing Authority* v. *Muller*, 270 N.Y. 333, 341, where the court said: "the evil inheres not so much in this or that individual structure as in the character of a whole neighborhood of dilapidated and unsanitary structures."

Moreover, a detailed consideration of the decision below shows that the limitations and rules which the decision prescribes upon the exercise of the power of eminent domain constitute, in many respects, an unwarranted invasion of the discretion which Congress has vested in the National

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[2] An affidavit of Dr. Daniel L. Seckinger, Director of Public Health for the District of Columbia, discusses the health problems of the area and the effect on the progam of a failure to redevelop this area completely by excluding even a relatively few buildings.

Capital Planning Commission, the Land Agency and the Commissioners of the District of Columbia.

In short, appellees take the position that the Redevelopment Act is constitutional and that the plan for Project Area B is a proper exercise of the authority granted therein but is not subject to the limitations imposed by the decision below.

C. It is important that this Court finally determine the issue presented: The decision of the court below raises substantial questions as to the constitutionality of the Act even though it sustains the Act. The importance of a definitive settlement of these questions in the execution of the plan as to Project Area B, which is just now in the preliminary stages of physical development is, we believe, obvious. And beyond that, the limitations of the decision may substantially affect the actions of the various agencies involved in the formulation of plans for other project areas in their attempt to solve this serious problem of the Nation's Capital.

The question is also one of national importance. Similar redevelopment programs have been adopted in some thirty-two states and have been sustained in some thirteen states against attacks based primarily on the fact that after the land in the area is assembled it may be sold or leased to private developers. The only contrary decisions are in Florida and Georgia. See cases collected in *Foeller* v. *Housing Authority of Portland*, 256 P.2d 752 (Ore. 1953), and in *Hunter* v. *Norfolk Redevelopment and Housing Authority*, 78 S.E. 2d 893 (Va. 1953). In *Burt* v. *City of Pittsburgh*, 340

U.S. 862, this Court affirmed upon motion the judgment of a three-judge federal court sustaining a similar redevelopment project in Pittsburgh, Pennsylvania. The national interest in such programs has been recognized by Congress in the Housing Act of 1949, Act of July 15, 1949, sec. 2, 63 Stat. 413, 42 U.S.C., Supp. V, 1441 *et seq.* which provides, *inter alia*, for the encouragement of such developments and for the furnishing of financial assistance in the execution of redevelopment plans subject to conditions similar to those of the District of Columbia Redevelopment Act. See section 105, 42 U.S.C., Supp. V, 1454. Large appropriations have been made for these purposes. A decision of this Court as to the constitutionality of the District of Columbia Act will thus have an important bearing upon the nationwide program.

CONCLUSION

For the foregoing reasons it is submitted that probable jurisdiction should be noted and this case heard upon the merits.

Respectfully submitted,

ROBERT L. STERN,
Acting Solicitor General, Counsel for Appellees, The District of Columbia Redevelopment Land Agency, and National Capital Planning Commission.

JANUARY, 1954.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1954 [illegible]